

# ARTICLE X

## Local Government

**Section 7. Cities.** Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Decisions -

Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

This section and Sec. 9 distinguished. - The constitutional distinction between Sec. 9 of this article, granting the qualified voters of a first class city the right to adopt, amend, or repeal a home rule charter, and this section, providing that cities may be merged, consolidated or dissolved in the manner provided by the legislature, appears to be reflective of a policy which has as its objective the placement of decisional responsibility for local problems within local control and decisional responsibility for broader problems in control of a broader community. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

The phrase "dissolved in the manner provided by law," - is interchangeable with "in the manner provided by the legislature." *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Since this section says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dissolution. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

This section leaves the legislature free to determine - the manner of dissolution of cities. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Delegation of power to dissolve cities. - By placing the power to dissolve cities in the legislature, the constitution does not impliedly prohibit the legislature from delegating the power to others. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Applied in *Area Dispatch, Inc. v. City of Anchorage*, 544 P.2d 1024 (Alaska 1976).

Quoted in *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

Cited in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

## Chapter 05. Incorporation.

### Article

1. Requirements (§§ 29.05.011 - 29.05.031)
2. Procedure (§§ 29.05.060 - 29.05.150)
3. Transitional Assistance (§§ 29.05.180 - 29.05.210)

### Article 1. Requirements.

#### Section

- |  |  |
|--|--|
| 11. Incorporation of a city                | 31. Incorporation of a borough or unified municipality |
| 21. Limitations on incorporation of a city |  |

**Sec. 29.05.011. Incorporation of a city.** (a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support city government;
- (5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city. (§ 4 ch 74 SLA 1985; am § 6 ch 58 SLA 1994)

Effect of amendments – The 1994 amendment, effective August 22, 1994, inserted “or home rule” in the introductory language in subsection (a).

Notes to Decisions – Lack of a valid legislative body would not prevent the valid incorporation of a municipality. This conclusion is bolstered by noting that Alaska's newly-enacted Municipal Government Code has completely separated the statutes relating to the incorporation procedure from those relating to the borough's legislative body. *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (Alaska 1974), decided under former AS 29.18.010.

The incorporation of a municipality is a process both conceptually and functionally distinct from that of establishing a legislative body for that corporation. *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974), decided under former AS 29.18.010.

**Sec. 29.05.021. Limitations on incorporation of a city.** (a) A community in the unorganized borough may not incorporate as a city if the services to be provided by the proposed city can be provided by annexation to an existing city.

(b) A community within a borough may not incorporate as a city if the services to be provided by the proposed city can be provided on an areawide or nonareawide basis by the borough in which the proposed city is located, or by annexation to an existing city. (§ 4 ch 74 SLA 1985)

**Sec. 29.05.031. Incorporation of a borough or unified municipality.**

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough. (§ 4 ch 74 SLA 1985; am § 7 ch 58 SLA 1994)

Effect of amendments. – The 1994 amendment, effective August 22, 1994, in subsection (a), added “, or as a unified municipality” at the end of the introductory language and inserted “or unified municipality” in paragraphs (2) and (3).

Notes to Decisions – As to de facto incorporation, see *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (Alaska 1974), decided under former, similar law.

Legislation to organize a specific borough unconstitutional. – Chapter 145, SLA 1974, by which the Eagle River-Chugiak Borough was organized, contravened the provisions of Alaska Const., art. II, § 19, since it was special and local legislation creating a new local government without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. *Abrams v. State*, Sup. Ct. Op. No. 1142 (File No. 2407), 534 P.2d 91 (Alaska 1975), decided under former, similar law.

Proposed area was not cohesive enough for organized borough government. – See *Valleys Borough Support Comm. v. Local Boundary Comm’n*, 863 P.2d 232 (Alaska 1993).

**Article 2. Procedure.**

## Section

060. Petition	120. Election of initial
070. Review	officials
080. Investigation	130. Integration of special
090. Hearing	districts and service areas
100. Decision	140. Transition
110. Incorporation election	150. Challenge of legality

**Sec. 29.05.060. Petition.** Municipal incorporation is proposed by filing a petition with the department. The petition must include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) maps, documents, and other information required by the department;
- (5) composition and apportionment of the governing body;
- (6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;
- (7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in
  - (A) home rule and first class cities in the area of the proposed borough or unified municipality; and
  - (B) the area of the proposed borough or unified municipality outside home rule and first class cities;
- (8) for a first class borough or unified municipality, a designation of areawide powers to be exercised;
- (9) for a second class borough, a designation of areawide and nonareawide powers to be exercised;
- (10) for a first class, second class, or home rule city, a designation of the powers to be exercised;
- (11) for a first class or home rule city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;
- (12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(13) for a home rule city, home rule borough, or unified municipality a proposed home rule charter. (§ 4 ch 74 SLA 1985; am § 8 ch 58 SLA 1994)

Effect of amendments. – The 1994 amendment, effective August 22, 1994, substituted “must” for “shall” in the second sentence of the introductory language, inserted “or unified municipality” in three places in paragraph (7) and in one place in paragraphs (8) and (13), substituted “first class, second class, or home rule city” for “first or second class city” in paragraph (10), inserted “or home rule” in paragraph (11), and inserted “city, home rule” in paragraph (13).

**Sec. 29.05.070. Review.** The department shall review an incorporation petition for content and signatures and shall return a deficient petition for correction and completion. (§ 4 ch 74 SLA 1985)

**Sec. 29.05.080. Investigation.** (a) If an incorporation petition contains the required information and signatures, the department shall investigate the proposal and shall hold at least one public informational meeting in the area proposed for incorporation. The department shall publish notice of the meeting.

(b) The department may combine incorporation petitions from the same general area.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation. (§ 4 ch 74 SLA 1985)

**Sec. 29.05.090. Hearing.** The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal. (§ 4 ch 74 SLA 1985)

**Sec. 29.05.100. Decision.** (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it may accept the petition or amend and accept the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the AS 44.62 (Administrative Procedure Act). (§ 4 ch 74 SLA 1985; am § 9 ch 58 SLA 1994)

Effect of amendments. – The 1994 amendment, effective August 22, 1994, in subsection (a), substituted “may accept” for “Shall accept” and inserted “or amend” in the second sentence, deleted “If the commission determines that the proposed municipal boundaries can be altered to meet the standards, it may alter the boundaries” preceding “and accept the petition” in the former third sentence, and made a related stylistic change.

Collateral references. – 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 28 et seq.

62 C. J. S., Municipal Corporations, § 6 et seq.

**Sec. 29.05.110. Incorporation election.** (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of an incorporation petition. Within 30 days after notification, the director of elections shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial municipal officials. If incorporation is rejected, no officials are elected. The election shall be held not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

(b) A voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in an incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each nonareawide power to be exercised is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing in the proposed borough but outside all cities in the proposed borough.

(d) A home rule charter included in an incorporation petition under AS 29.05.060(13) is considered to be part of the incorporation question. The home rule charter is adopted if the voters approve incorporation of the city, borough, or unified municipality.

(e) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs under this section. (§ 4 ch 74 SLA 1985; am § 10 ch 58 SLA 1994)

Effect of amendments. – The 1994 amendment, effective August 22, 1994, substituted “the city, borough, or unified municipality” for “the borough” in the second sentence in subsection (d).

Collateral references. – 25 Am. Jur. 2d, Elections, § 1 et seq.

63 C. J. S., Municipal Corporations, § 1032.

**Sec. 29.05.120. Election of initial officials.** (a) Nominations for initial municipal officials are made by petition. The petition shall be in the form prescribed by the director of elections and must include the name and address of the nominee and a statement of the nominee that the nominee is qualified under the provisions of this title for the office that is sought. A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly; or

(2) city mayor and as a member of the council in a first class city.

(b) Except for a proposed second class city, petitions to nominate initial officials must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officials are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) Petitions to nominate initial officials of a second class city must include the signature and resident address of 10 voters in the area of the proposed city.

(d) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs.

(e) The initial elected officials take office on the first Monday following certification of their election.

(f) The initial elected members of the governing body shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected. (§ 4 ch 74 SLA 1985)

Collateral references. – 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.

62 C. J. S., Municipal Corporations, §§ 152-155.

**Sec. 29.05.130. Integration of special districts and service areas.** (a)

A service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation. On integration the municipality succeeds to all the rights, powers, duties, assets, and liabilities of the service area. On integration all property in the service area subject to taxation to pay the principal and interest on bonds at the time of integration remains subject to taxation for that purpose.

(b) After integration, the municipality may exercise in a former service area all of the rights and powers exercised by the service area at the time of integration, and, as successor to the service area, may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a municipality in which the service area was formerly located. (§ 4 ch 74 SLA 1985)

Cross References. – For constitutional provision as to integrating existing special service districts into new boroughs, see Alaska Const., art. X, § 15.

Opinions of Attorney General. – When boroughs assumed powers previously exercised by service areas, public utility districts, and school districts, they were required to assume the following duties: contractual obligations, and liability on bonded and other indebtedness under a former, similar provision. 1963 Op. Att'y Gen. No. 29.

**Sec. 29.05.140. Transition.** (a) The powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality.

(b) Before the assumption, the new municipality shall give written notice of its assumption of the rights, powers, duties, assets, and liabilities under this section and AS 29.05.130 to the city or service area concerned. Municipal officials shall consult with the officials of the city or service area concerned and arrange an orderly transfer.

(c) After the incorporation of a new municipality, a service area in it may not assume new bonded indebtedness, make a contract, or transfer an asset without the consent of the governing body.

(d) Upon incorporation, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter.

(e) This section applies to home rule and general law municipalities. (§ 4 ch 74 SLA 1985; am § 11 ch 58 SLA 1994)

Revisor's notes. – Subsection (d) was enacted as (e). Relettered in 1994, at which time former (d) was relettered as (e).

Effect of amendments. – The 1994 amendment, effective August 22, 1994, added present subsection (d).

Opinions of Attorney General. – Under a former, similar provision, city ordinances affecting public health remained in effect for a period not to exceed two years from the date of the borough's incorporation or until superseded by ordinances passed by the borough, and it was superfluous to include this in the incorporation petition. 1962 Op. Att'y Gen. No. 9.

A teacher who had served a two-year probationary period in a rural or district school, and who obtained tenure in that school, retained his tenure status when the school became part of an organized borough under a former, similar provision. 1963 Op. Att'y Gen. No. 11.

A former, similar provision provided for a two-year transition period during which the organized borough had to assume the powers of any school district within its boundaries. The statute did not make this transition period applicable to state-operated schools, since such schools existed only outside of city school districts, incorporated school districts, and independent school districts. 1963 Op. Att'y Gen. No. 23.

Under a former, similar provision, a newly incorporated borough assumed administrative responsibility for a state-operated school within its boundaries immediately after incorporation. 1963 Op. Att'y Gen. No. 23.

A former, similar provision provided that an organized borough would provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools had to be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should have been made shortly after incorporation, prior to the beginning of the next fiscal year, and as quickly as was consistent with continuity of operation and efficient management. 1963 Op. Att'y Gen. No. 23.



The clear meaning of a former, similar provision was that after the incorporation of an organized borough and until the powers exercised by service areas and special districts were assumed by the borough, service areas and special districts could not assume new bonded indebtedness, make any contract, or transfer any asset without first receiving the consent of the borough assembly. There was no limitation on the type of contract into which the service area or special district might enter except that the approval of the borough assembly first be obtained. 1963 Op. Att'y Gen. No. 29.

A former, similar provision provided a safeguard for the boroughs to assure that special service districts, public utility districts and school districts did not incur financial obligations which were not in the best interest of the borough during the transition period between the organization of the borough and date at which the powers presently exercised by the service areas and service districts were assumed by the borough. 1963 Op. Att'y Gen. No. 29.

Under a former, similar provision, when boroughs assumed powers previously exercised by service areas, public utility districts, and school districts, they were required to assume the following duties: contractual obligations, and liability on bonded and other indebtedness. 1963 Op. Att'y Gen. No. 29.

A borough had to repay a city for advances made from city general fund to pay debts incurred in behalf of the city school district under a former, similar provision. 1965 Op. Att'y Gen. No. 1.

If a borough failed to pay city school district obligations, as required by a former, similar provision, the city or other creditors might enforce payment. 1965 Op. Att'y Gen. No. 1.

Though a borough was liable to pay the city school district's obligations under a former, similar provision, the Department of Education had no authority to require that the borough place a share of state support money into special accounts to be used only for this purpose. 1965 Op. Att'y Gen. No. 1.

**Sec. 29.05.150. Challenge of legality.** A person may not challenge the formation of a municipality except within six months after the date of its incorporation. (§ 4 ch 74 SLA 1985)

Notes to Decisions – Laches. - In a contest over the validity of a unit of municipal government, laches can be raised as a defense to such a claim. *Concerned Citizens v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1093 (File No. 2239), 527 P.2d 447 (Alaska 1974), decided under former, similar law.

Collateral references. – 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 28-38.

62 C. J. S., *Municipal Corporations*, §§ 8, 36.

Estoppel as to validity of organization of municipality by recitals in bonds. 86 ALR 1088; 158 ALR 938.

Injunction to restrain enforcement of municipal tax upon ground involving attack upon legal existence of municipality. 129 ALR 257.

Power of district or prosecuting attorney to bring action of quo warranto attacking existence of municipal corporation. 131 ALR 1219.

Organization thought to be incorporated under unconstitutional statute as a de facto corporation. 136 ALR 193.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR2d 1279.

## ARTICLE 1. STANDARDS FOR INCORPORATION OF CITIES.

### Section

- 05. Community
- 10. Need
- 20. Resources
- 30. Population
- 40. Boundaries
- 42. Best interests of state

**3 AAC 110.005. COMMUNITY.** An area proposed for incorporation as a city must encompass a community.

(Eff. 5/19/02, Register 162) Authority: AS 29.05.011, AS 44.33.812

**3 AAC 110.010. NEED.** (a) In accordance with AS 29.05.011, a community must demonstrate a reasonable need for city government. In this regard, the commission may consider relevant factors, including

- (1) existing or reasonably anticipated social or economic conditions;
- (2) existing or reasonably anticipated health, safety and general welfare conditions;
- (3) existing or reasonably anticipated economic development; and
- (4) adequacy of existing services.

(b) In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently or more effectively by annexation to an existing city, or can be provided more efficiently or more effectively by an existing organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162) Authority: AS 29.05.011, AS 29.05.021, AS 44.33.812

**3 AAC 110.020. RESOURCES.** In accordance with AS 29.05.011, the economy of a proposed city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission

- (1) will consider
  - (A) the reasonably anticipated functions of the proposed city;
  - (B) the reasonably anticipated expenses of the proposed city;
  - (C) the ability of the proposed city to generate and collect local revenue, and the reasonably anticipated income of the proposed city;
  - (D) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the third full fiscal year of operation;
  - (E) the economic base of the proposed city;
  - (F) property valuations for the proposed city;

- (G) existing and reasonably anticipated industrial, commercial, and resource development for the proposed city; and
- (H) personal income of residents of the proposed city; and
- (2) may consider other relevant factors, including
  - (A) land use for the proposed city;
  - (B) the need for and availability of employable skilled and unskilled persons to serve the proposed city; and
  - (C) a reasonably predictable level of commitment and interest of the residents in sustaining a city.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162) Authority: Art. X, sec. 12, Ak Const., AS 29.05.011, AS 44.33.812

**3 AAC 110.030. POPULATION.** (a) In accordance with AS 29.05.011, the population of a proposed city must be sufficiently large and stable to support the proposed city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumeration;
- (2) durations of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(b) To become a first class or home rule city, the territory proposed for incorporation must have a population of at least 400 permanent residents.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162) , Authority: Art. X, sec. 12, Ak Const., AS 29.05.011, AS 44.33.812

**3 AAC 110.040. BOUNDARIES.** (a) In accordance with AS 29.05.011, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

(c) The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042.

(d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level.

(e) If a petition for incorporation of a proposed city describes boundaries overlapping the boundaries of an existing organized borough or city, the petition for incorporation must also address and comply with all standards and procedures for either annexation of the new city to the existing borough, or detachment of the overlapping region from the existing borough or city. The commission will consider and treat that petition for incorporation as also being either an annexation petition to the existing borough, or a detachment petition from the existing borough or city.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162), Authority:  
Art. X, sec. 12, Ak Const., AS 29.05.011, AS 44.33.812

**3 AAC 110.042. BEST INTERESTS OF STATE.** In determining whether incorporation of a city is in the best interests of the state under AS 29.05.100(a), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;
- (3) will relieve the state government of the responsibility of providing local services; and
- (4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the city in the event of the city's dissolution.

(Eff. 5/19/02, Register 162), Authority: Art. X, sec. 12, Ak Const., AS  
29.05.100, AS 44.33.812

## ARTICLE 12. PROCEDURES FOR PETITIONING.

### Section

400.	Applicability	530.	Departmental report
410.	Petitioners	540.	Amendments and withdrawal
420.	Petition	550.	Commission public hearing
425.	Legislative review annexation petitions	560.	Commission hearing procedures
430.	Consolidation of petitions	570.	Decisional meeting
440.	Technical review of petition	580.	Reconsideration
450.	Notice of petition	590.	Certain local action annexations
460.	Service of petition	600.	Local action/local option elections
470.	Proof of notice and service	610.	Legislative review
480.	Responsive briefs and written comments	620.	Judicial review
490.	Reply brief	630.	Effective date and certification
500.	Limitations on advocacy	640.	Scheduling
510.	Informational sessions	650.	Resubmittals and reversals
520.	Departmental public meetings	660.	Purpose of procedural regulations; relaxation or suspension of procedural regulation

**3 AAC 110.400. APPLICABILITY.** Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.660 apply to petitions for city reclassification under AS 29.04, for incorporation under AS 29.05, and for alterations to municipalities under AS 29.06. However, only those sections of 3 AAC 110.410 - 3 AAC 110.660 with which compliance is required under 3 AAC 110.590 apply to an annexation petition filed under a local action method provided for in AS 29.06.040(c)(2) or (c)(3).

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.100; AS 20.04.040; AS 29.06.460; AS 29.05.060; AS 44.33.812; AS 29.06.040; AS 29.06.090

**3 AAC 110.410. PETITIONERS.** (a) A petition for a proposed action by the commission under this chapter may be initiated by

- (1) the legislature;
- (2) the commissioner;
- (3) the staff of the commission or a person designated by the commission, subject to (d) of this section;
- (4) a political subdivision of the state;
- (5) a regional educational attendance area;
- (6) a coastal resource service area;
- (7) at least 10 percent of the persons registered to vote in a political subdivision of the state, in a regional educational attendance area, or in a coastal resource service area, if the petition seeks the alteration of a municipality under AS 29.06, other than by local option under AS 29.06.090(b)(2) or AS 29.06.450(a)(2);

(8) at least 10 percent of the persons registered to vote in a territory proposed for annexation by election under AS 29.06.040(c)(1) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2);

(9) at least 25 percent of the persons registered to vote in a territory proposed for detachment by election under AS 29.06.040(c)(1) or by legislative review under AS 29.06.040(b) or AS 44.33.812(b)(2); or

(10) the number of qualified voters required under

(A) AS 29.04.040, if the petition seeks reclassification of a city;

(B) AS 29.05.060, if the petition seeks a municipal incorporation; and

(C) AS 29.06.090(b)(2) or AS 29.06.450(a)(2), if the petition is a local option petition under those provisions.

(b) If, to achieve compliance with AS 29.06.100(a), a petition for merger or consolidation must be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.

(c) The provisions of (a)(10) of this section may not be construed to apply to petition procedures established by the commission under AS 44.33.812(a)(2), AS 29.06.040(c) for annexation and detachment, AS 29.06.090(b)(1) for merger and consolidation, or AS 29.06.450(a)(1) for dissolution.

(d) The staff of the commission or a person designated by the commission may initiate a petition if the commission

(1) determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter; and

(2) directs the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The entity or group initiating a petition under (a) of this section is the petitioner. A petition must include a designation of one person as representative of the petitioner.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.100; AS 29.06.450; AS 29.04.040; AS 29.06.460; AS 29.05.060; AS 44.33.812; AS 29.06.040; AS 29.06.090

**3 AAC 110.420. PETITION.** (a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and supporting materials with the department.

(b) A petition must be filed on forms provided by the department. On the forms provided, the department shall require that the petition include the following information and supporting materials:

(1) the name of the petitioner;

(2) the name and class of any

(A) existing municipal government for which a change is proposed; and

(B) proposed municipal government;

(3) a general description of the nature of the proposed commission action;

- (4) a general description of the area proposed for change;
- (5) a statement of reasons for the petition;
- (6) legal descriptions, maps, and plats for a proposed municipality, or for any existing municipality for which a change is proposed;
- (7) the size of the area proposed for change;
- (8) the physical address and mailing address of the petitioner's representative designated under 3 AAC 110.410(e), and the telephone number, facsimile number, and electronic mail address, if any, for the representative;
- (9) data estimating the population of the area proposed for change;
- (10) information relating to public notice and service of the petition;
- (11) the following tax data:
  - (A) the assessed or estimated value of taxable property in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;
  - (B) projected taxable sales in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;
  - (C) each municipal government tax levy currently in effect in the territory proposed for change.
- (12) a three-year projection of revenue, operating expenditures, and capital expenditures for a proposed municipality, or for any existing municipality for which a change is proposed;
- (13) information about any existing long-term municipal debt;
- (14) information about the powers and functions of
  - (A) a proposed municipality;
  - (B) any existing municipality for which a change is proposed, before and after the proposed change; and
  - (C) alternative service providers, including regional educational attendance areas and other service areas within the area proposed for change;
- (15) the transition plan required under 3 AAC 110.900;
- (16) information about the composition and apportionment of the governing body of
  - (A) a proposed municipality; and
  - (B) any existing municipality for which a change is proposed, before and after the proposed change;
- (17) information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965);
- (18) a supporting brief that provides a detailed explanation of how the proposal satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action;
- (19) documentation demonstrating that the petitioner is authorized to file the petition under 3 AAC 110.410;
- (20) for petitions to incorporate or consolidate a home rule city or borough, the proposed municipal charter;

(21) an affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

(c) The petitioner shall provide the department with a copy of the petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.100; AS 29.06.450; AS 29.04.040; AS 29.06.460; AS 29.05.060; AS 44.33.812; AS 29.06.040; AS 29.06.090
---

**3 AAC 110.425. LEGISLATIVE REVIEW ANNEXATION PETITIONS. (a)**

Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of the prospective annexation petition and a summary of the prospective petition. The prospective petitioner shall also conduct a public hearing on the annexation proposal in accordance with (d) - (e) of this section.

(b) The prospective annexation petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section must include a map of the territory proposed for annexation, a synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, a summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.990.

(c) The prospective annexation petition and the summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioner shall make one copy of the prospective petition available for public review at a convenient location in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation. However, the prospective petitioner need not provide more than five copies of the prospective petition for public review regardless of the population of the territory proposed for annexation. The prospective petitioner shall make the summary of the annexation proposal available for distribution to the public without charge at a convenient location in or near the territory proposed for annexation.

(d) The public hearing required under (a) of this section must address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the proposed transition plan required under 3 AAC 110.900. The hearing must be held at a convenient location in or near the territory proposed for annexation. The hearing must allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipality, the governing body shall conduct the hearing.

(e) In the manner provided for a hearing of the commission under 3 AAC 110.550, a prospective petitioner shall give public notice and a public service announcement of the public hearing required under (a) of this section.

(f) The department shall specify the text of the public notice required under (e) of this section, to ensure that the notice contains the following information:



- (1) the title of the notice of the hearing;
- (2) the name of the prospective petitioner;
- (3) a brief description of the nature of the prospective legislative review annexation proposal, including the size and general location of the area under consideration;
- (4) information about where and when the prospective petition is available for public review;
- (5) information about where the public may receive, without charge, a summary of the prospective petition;
- (6) a statement concerning who will conduct the hearing;
- (7) a statement of the scope of the hearing;
- (8) notification that public comments will be accepted during the hearing, and a statement of any time limits to be placed on individuals who offer comments;
- (9) the date, time, and place of the hearing;
- (10) a statement of compliance with 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act);
- (11) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(g) The department shall specify the text of the public service announcement required under (e) of this section, to ensure that the announcement contains the following information:

- (1) the title of the public service announcement;
- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the prospective petitioner;
- (4) a description of the prospective proposed action;
- (5) a statement of the size and general location of the area being considered for annexation;
- (6) information about where and when the prospective petition is available for public review;
- (7) information about where the public may receive, without charge, a summary of the prospective petition;
- (8) a statement concerning who will conduct the hearing;
- (9) the date, time, and place of the hearing;
- (10) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(h) When filing a petition with the department under this section, the prospective petitioner shall submit evidence of compliance with the requirements of (e) of this section, a written summary or transcript of the hearing, a copy of any written materials received during the hearing, and an audio recording of the hearing.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812
---

**3 AAC 110.430. CONSOLIDATION OF PETITIONS.** If two or more petitions pending action by the commission affect all or some portion of the same territory, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.100; AS 44.33.818; AS 29.06.450; AS 29.04.040; AS 29.06.470; AS 44.33.822; AS 29.05.060; AS 44.33.812; AS 44.33.826; AS 29.06.040; AS 44.33.814; AS 29.06.090

**3 AAC 110.440. TECHNICAL REVIEW OF PETITION.** (a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing, and the department shall file the petition.

(d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.480; AS 44.33.020; AS 29.04.040; AS 44.33.812; AS 29.05.070; AS 29.06.040; AS 29.06.110

**3 AAC 110.450. NOTICE OF PETITION.** (a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall require the petitioner to provide notice through other means designed to reach the public;

(2) post public notice of the filing of the petition in

(A) at least three prominent locations readily accessible to the public and in or near the territory proposed for change; and

(B) other locations designated by the department;

(3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;

(4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:

(1) the title of the notice of the filing of the petition;

(2) the name of the petitioner;

(3) a description of the proposed action;

(4) a statement of the size and general location of the territory proposed for change;

(5) a map of the territory proposed for change, or information where a map of the territory is available for public review;

(6) a reference to the constitutional, statutory, and regulatory standards applicable to the commission's decision;

(7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;

(8) designation of where and when the petition is available for public review;

(9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(10) a reference to the regulations applicable to the filing of responsive briefs,

(11) the deadline for receipt of responsive briefs and comments;

(12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;

(13) a telephone number for inquiries to the commission staff.

(c) The department shall specify the text of the public service announcement required in (a)(5) of this section, to ensure that the announcement contains the following information:

- (1) the title of the public service announcement;
- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the petitioner;
- (4) a description of the proposed action;
- (5) a statement of the size and general location of the territory proposed for change;
- (6) a statement of where and when the petition is available for public review;
- (7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;
- (8) a statement of the deadline for responsive briefs and comments;
- (9) a statement of where the complete notice of the filing may be reviewed;
- (10) a telephone number for inquiries to the petitioner.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.500; AS 29.04.040; AS 44.33.812; AS 29.05.100; AS 29.06.040

**3 AAC 110.460. SERVICE OF PETITION.** (a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other interested persons and entities designated by the department. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a)(1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.500; AS 29.04.040; AS 44.33.812; AS 29.05.100; AS 29.06.040

**3 AAC 110.470. PROOF OF NOTICE AND SERVICE.** No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.500; AS 29.04.040; AS 44.33.812; AS 29.05.100; AS 29.06.040

**3 AAC 110.480. RESPONSIVE BRIEFS AND WRITTEN COMMENTS.** (a) If an interested person or entity seeks to participate as a respondent to a petition, that person or entity must have the capacity to sue and be sued, and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) An interested person or entity may file with the department written comments supporting or opposing the petition. Upon receiving those comments, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.110; AS 29.06.130; AS 29.04.040; AS 29.06.480; AS 29.05.080; AS 29.06.500; AS 29.05.100; AS 44.33.812; AS 29.06.040

**3 AAC 110.490. REPLY BRIEF.** The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.110; AS 29.06.130; AS 29.04.040; AS 29.06.480; AS 29.05.080; AS 29.06.500; AS 29.05.100; AS 44.33.812; AS 29.06.040

**3 AAC 110.500. LIMITATIONS ON ADVOCACY.** (a) Unless otherwise ordered by the commission, for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.110; AS 29.06.130; AS 29.04.040; AS 29.06.480; AS 29.05.080; AS 29.06.500; AS 29.05.100; AS 44.33.812; AS 29.06.040

**3 AAC 110.510. INFORMATIONAL SESSIONS.** (a) If the department determines that persons or entities within or near the area of the proposed change have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.110; AS 29.06.130; AS 29.04.040; AS 29.06.480; AS 29.05.080; AS 29.06.500; AS 29.05.100; AS 44.33.812; AS 29.06.040

**3 AAC 110.520. DEPARTMENTAL PUBLIC MEETINGS.** (a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time, and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the area of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the area of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The public meeting shall be recorded and summarized in the report with recommendations of the department prepared under 3 AAC 110.530.

(d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.480; AS 29.05.080; AS 44.33.812; AS 29.06.040; AS 29.06.090; AS 29.06.110

**3 AAC 110.530. DEPARTMENTAL REPORT.** (a) The department shall investigate and analyze a petition filed with the department under this chapter, and shall submit to the commission a written report of its findings and recommendations regarding the petition.

(b) The department shall mail to the petitioner and respondents its preliminary report with recommendations before submitting its final report with recommendations to the commission. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report with recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) In its final written report with recommendations, the department shall consider timely submitted written comments addressing the preliminary report with recommendations.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.110; AS 29.06.490; AS 29.04.040; AS 44.33.812; AS 29.05.080; AS 29.06.040

**3 AAC 110.540. AMENDMENTS AND WITHDRAWAL.** (a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. If voters initiated the original petition,

(1) the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended petition with the original petition documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

(c) The chair of the commission may determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the chair of the commission may shorten the timing.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or near the area of the proposed change is best served by allowing the proposed amendment or withdrawal.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.100; AS 29.06.450; AS 29.04.040; AS 29.06.460; AS 29.05.060; AS 44.33.812; AS 29.06.040; AS 44.33.814; AS 29.06.090



**3 AAC 110.550. COMMISSION PUBLIC HEARING.** (a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by the department to the petitioner and to each respondent;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall provide notice through other means designed to reach the public; and

(3) posted by the petitioner in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.

(d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery or postage-prepaid mail.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.120; AS 44.33.818; AS 29.06.490; AS 29.04.040; AS 44.33.812; AS 29.05.090; AS 44.33.814; AS 44.33.826; AS 29.06.040

**3 AAC 110.560. COMMISSION HEARING PROCEDURES.** (a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
  - (2) an opening statement by the petitioner, not to exceed 10 minutes;
  - (3) an opening statement by each respondent, not to exceed 10 minutes;
  - (4) sworn testimony of witnesses
    - (A) with expertise in matters relevant to the proposed change; and
    - (B) called by the petitioner;
  - (5) sworn testimony of witnesses
    - (A) with expertise in matters relevant to the proposed change; and
    - (B) called by each respondent;
  - (6) sworn responsive testimony of witnesses
    - (A) with expertise in matters relevant to the proposed change; and
    - (B) called by the petitioner;
  - (7) a period of public comment by interested persons, not to exceed three minutes for each person;
  - (8) a closing statement by the petitioner, not to exceed 10 minutes;
  - (9) a closing statement by each respondent, not to exceed 10 minutes; and
  - (10) a reply by the petitioner, not to exceed five minutes.
- (c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.
- (d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.
- (e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.
- (f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.120; AS 29.06.490; AS 44.33.820; AS 29.04.040; AS 44.33.812; AS 29.05.090; AS 44.33.814; AS 44.33.826; AS 29.06.040; AS 44.33.816

**3 AAC 110.570. DECISIONAL MEETING.** (a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition as altered.

If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 44.33.818; AS 29.06.500; AS 44.33.820; AS 29.04.040; AS 44.33.812; AS 44.33.822; AS 29.05.100; AS 44.33.814; AS 44.33.826; AS 29.06.040; AS 44.33.816

**3 AAC 110.580. RECONSIDERATION.** (a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.

(b) Within 20 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.

(c) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person or entity requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(d) If the person or entity filing the request for reconsideration is a group, the request must identify a representative of the group.

(e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision if the commission determines that

- (1) a substantial procedural error occurred in the original proceeding;
- (2) the original vote was based on fraud or misrepresentation;
- (3) the commission failed to address a material issue of fact or a controlling principle of law; or
- (4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(f) If the commission does not act on a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a)-(f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.500; AS 44.33.820; AS 29.04.040; AS 44.33.812; AS 44.33.822; AS 29.05.100; AS 44.33.814; AS 44.33.826; AS 29.06.040

**3 AAC 110.590. CERTAIN LOCAL ACTION ANNEXATIONS.** (a) Except as otherwise provided in this section, if a petition is filed with the department under a local action method provided for in AS 29.06.040(c)(2) or (c)(3) for annexation of adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners, only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
- (2) technical review of the petition under 3 AAC 110.440;
- (3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;
- (4) responsive briefs and comments under 3 AAC 110.480, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;
- (5) a reply brief under 3 AAC 110.490, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to seven days from the date that the petitioner received the responsive brief;

(6) a departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days before the public hearing under 3 AAC 110.550; interested persons may submit written comments to the department on its report no later than seven days before the public hearing;

(7) the commission's public hearing under 3 AAC 110.550, except that the commission may conduct the hearing by teleconference;

(8) the decisional meeting under 3 AAC 110.570;

(9) reconsideration under 3 AAC 110.580.

(b) The commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.

(c) The commission may relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

(d) Repealed 5/19/02

(e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission may convert a local action petition for an annexation described in (a) of this section to a legislative review petition.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812; AS 44.33.814; AS 29.06.040; AS 44.33.826; AS 29.06.090; AS 44.33.818; AS 29.06.450

**3 AAC 110.600. LOCAL ACTION/LOCAL OPTION ELECTIONS.** (a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.

(b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost, and in the manner prescribed by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.

(c) Under AS 29.06.040(c) and AS 44.33.812(a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.140; AS 29.06.510; AS 29.04.040; AS 44.33.812; AS 29.05.110; AS 29.05.120; AS 29.06.040

**3 AAC 110.610. LEGISLATIVE REVIEW.** (a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812; AS 44.33.822; AS 29.06.040; AS 44.33.826; AS 29.06.090; AS 44.33.828; AS 29.06.450

**3 AAC 110.620. JUDICIAL REVIEW.** A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.500; AS 29.04.040; AS 44.33.812; AS 29.05.100; AS 29.06.040

**3 AAC 110.630. EFFECTIVE DATE AND CERTIFICATION.** (a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, or municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed, and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.140; AS 29.06.510; AS 29.04.040; AS 44.33.812; AS 29.05.120; AS 29.06.040; AS 44.33.828

**3 AAC 110.640. SCHEDULING.** (a) The chair of the commission shall set or amend the schedule for action on a petition.

(b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least

(1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days after the date of mailing of a departmental preliminary report with recommendations to the petitioner for receipt of written summary comments to the department; and

(4) 21 days between the date of mailing of a final report with recommendations by the department to the petitioner and the commission hearing on the petition.

(c) The commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all of the same territory and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.090; AS 44.33.814; AS 29.06.110; AS 29.04.040; AS 29.06.120; AS 29.05.070; AS 29.06.480; AS 29.05.080; AS 29.06.490; AS 29.05.090; AS 44.33.020; AS 44.33.826; AS 29.06.040; AS 44.33.812

**3 AAC 110.650. RESUBMITTALS AND REVERSALS.** Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

Authority: Art. X, sec. 12, Ak Const.; AS 29.06.130; AS 29.06.450; AS 29.04.040; AS 29.06.500; AS 29.05.100; AS 44.33.812; AS 29.06.040; AS 29.06.090

**3 AAC 110.660. PURPOSE OF PROCEDURAL REGULATIONS; RELAXATION OR SUSPENSION OF PROCEDURAL REGULATION.** The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.660 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.090; AS 29.06.450; AS 29.04.040; AS 44.33.812; AS 29.05.100; AS 29.06.040



## ARTICLE 13. GENERAL PROVISIONS.

### Section

- 900. Transition
- 910. Statement of non-discrimination
- 920. Determination of community
- 970. Determination of essential city or borough services
- 980. Determination of best interests of the state
- 990. Definitions

**3 AAC 110.900. TRANSITION.** (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.090; AS 29.06.130; AS 29.04.040; AS 29.06.150; AS 29.05.100; AS 29.06.160; AS 29.05.130; AS 44.33.812; AS 29.05.140; AS 29.06.040

**3 AAC 110.910. STATEMENT OF NON-DISCRIMINATION.** A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

**3 AAC 110.920. DETERMINATION OF COMMUNITY.** (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 individuals;
- (2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and
- (3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

- (1) public access to or the right to reside at the location of the population is restricted;
- (2) the population is adjacent to a community and is dependent upon that community for its existence; or
- (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

**3 AAC 110.970. DETERMINATION OF ESSENTIAL CITY OR BOROUGH SERVICES.** (a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the territory; and
  - (2) cannot be provided more efficiently and more effectively
    - (A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or
    - (B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.
- (b) The commission may determine essential borough services to include
- (1) assessing and collecting taxes;
  - (2) providing primary and secondary education;
  - (3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

(1) levying taxes;

(2) for a city in the unorganized borough, assessing and collecting taxes;

(3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;

(4) public safety protection;

(5) planning, platting, and land use regulation; and

(6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

(Eff. 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.05.100; AS 29.06.450; AS 29.04.040; AS 29.06.040; AS 29.06.500; AS 29.05.011; AS 29.06.090; AS 44.33.812; AS 29.05.031; AS 29.06.130

**3 AAC 110.980. DETERMINATION OF BEST INTERESTS OF THE STATE.** If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

(1) the broad policy benefit to the public statewide; and

(2) whether the municipal government boundaries that are developed serve

(A) the balanced interests of citizens in the area proposed for change;

(B) affected local governments; and

(C) other public interests that the commission considers relevant.

(Eff. 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.05.100; AS 29.06.450; AS 29.04.040; AS 29.06.040; AS 29.06.500; AS 29.05.011; AS 29.06.090; AS 44.33.812; AS 29.05.031; AS 29.06.130

**3 AAC 110.990. DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality;

(2) "coastal resource service area" means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;

(3) "commission" means the Local Boundary Commission;

(4) "commissioner" means the commissioner of community and economic development;

(5) "community" means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(6) "contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other;

(7) "department" means the Department of Community and Economic Development;

(8) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" includes one or more of the following:

(A) assessing, levying, and collecting taxes;

(B) providing education, public safety, public health, and sanitation services;

(C) planning, platting and land use regulation;

(D) conducting elections; and

(E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(9) "model borough boundaries" means those boundaries set out in the commission's publication Model Borough Boundaries, revised as of June 1997 and adopted by reference;

(10) "permanent resident" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(11) "political subdivision" means a borough or city organized and operated under state law;

(12) "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; "property owner" does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land;

(13) "regional educational attendance area" means an educational service area established and organized under AS 14.08 and AS 29.03.020;

(14) "witnesses with expertise in matters relevant to the proposed change" means individuals who are

(A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or

(B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

**Editor's note:** The Local Boundary Commission's publication *Model Borough Boundaries*, adopted by reference in 3 AAC 110.990, is on file at the offices of the Local Boundary Commission staff, Department of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, Alaska, and is available at the web site of the Department of Community and Economic Development, at [www.dced.state.ak.us/cbd/lbc/lbc.htm](http://www.dced.state.ak.us/cbd/lbc/lbc.htm).